

DOCKET NO: FBT-CV18-6076475-S:	:	SUPERIOR COURT
	:	
WILLIAM SHERLACH, ET AL.,	:	J.D. OF FAIRFIELD
	:	
VS.	:	AT BRIDGEPORT
	:	
ALEX EMRIC JONES, ET AL.	:	February __, 2019

PROTECTIVE ORDER

The following order (“Protective Order”) is entered pursuant to Practice Book Section 13-5(7) for the protection against public disclosure of certain proprietary trade secrets, confidential research, business strategies, and commercial information and other information affecting the privacy interests of non-parties, which are disclosed during discovery in this case. This Protective Order does not protect against public disclosure of information and documents filed with the Court and does not contravene Practice Book Sections 7-4B, 7-4C and 11-20A. The Court finds that good cause exists for entry of this Protective Order.

Definitions

1. The following definitions apply to this Protective Order:
 - a. The term “document” or “documents” has the same meaning as in Practice Book Section 13-1(c)(2).
 - b. The term “Confidential Information” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Conn. Gen. Stats. § 35-51(d).

Confidential Information

2. Information, documents and material in the following categories may be designated as Confidential Information under the terms of this Protective Order:

- a. Personal identifying information as defined in Practice Book Section 4-7, and including party and witness residential addresses;
- b. Proprietary market research conducted by or on behalf of a defendant concerning the product marketplace, product marketing, sales, branding and promotion, and consumer satisfaction and demographics;
- c. Proprietary marketing, branding, promotional, and sales strategies;
- d. Proprietary financial and accounting information;
- e. Written agreements to which a defendant is a party containing non-disclosure or confidentiality provisions; and
- f. Plaintiffs' medical and/or mental health records.

The parties retain the right to move the Court to alter these categories, by adding materials which may be designated confidential or by deleting or narrowing such categories.

Purpose

3. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced by the parties in this action and designated as Confidential Information in accordance with the terms of this Protective Order. This Protective Order is not intended to address or govern claims of work product or privilege that may be asserted by any of the parties, except as otherwise provided in this Protective Order.

Designation and Treatment

4. Any party to this action who produces or supplies information, documents or other materials in this action (hereinafter the "Designating Party") may designate as "Confidential Information" any information, document or material that falls within the categories set forth in paragraph 2 of this Protective Order. The designation of any information, document or material as "Confidential Information" shall represent a good faith determination by counsel so designating to

the Court that there is good cause for the material so designated to receive the protections of this Order. The designation of “Confidential Information” shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, words that in substance state, “**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.**” Any material, document or information for which it is impracticable to affix such a legend may be designated by written notice to that effect with a reasonable description of the material in question. Third parties may take advantage of the provisions of this Protective Order by indicating in writing to the requesting party their intent to comply with its procedures or they may seek separate protection from the Court.

5. At the option of the Designating Party, and to facilitate prompt discovery by allowing inspection or review before formal designation in the manner specified above, all information, material or documents produced in discovery shall be treated as Confidential Information pending inspection and copying. Subject to paragraph 18 of this Protective Order, copies of information, material, and documents selected for copying and reproduced for the inspecting party will lose their status as Confidential Information unless delivered with the necessary legend.

6. All persons having access to Confidential Information shall maintain it in a safe and secure manner to ensure compliance with this Protective Order. Any summary, extract, paraphrase, quotation, restatement, compilation, notes or copy containing Confidential Information, or any electronic image or database containing Confidential Information, shall be subject to the terms of this Protective Order to the same extent as the material or information from which such summary, extract, paraphrase, quotation, restatement, compilation, notes, copy, electronic image, or database is derived.

7. A Designating Party may in good faith redact non-responsive and/or irrelevant information from any document or material. However, unredacted copies of such documents shall be maintained by the Designating Party. Designated attorneys for a Discovering Party and, if necessary, qualified Experts under paragraph 10(c) retained by them, shall have access to the unredacted versions of the documents but only for the purpose of ascertaining the appropriateness

of any redactions.

8. A Designating Party may in good faith redact non-responsive and/or irrelevant information from this Protective Order shall not protect from disclosure information, documents or other material that (a) the Designating Party has not made reasonable efforts to keep confidential; (b) has been produced in any other action or proceeding without confidentiality protection, except inadvertently produced documents; (c) has been lawfully obtained by and from another source; or (d) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired.

Limitations on Use

9. Except to the extent expressly authorized by this Protective Order, Confidential Information shall not be used or disclosed for any purpose other than the preparation and trial of this case, all cases consolidated with this case, and in any appeal taken from any order or judgment herein.

Limitations on Disclosure

10. Except with the prior written consent of the Designating Party, or as expressly authorized by this Protective Order, no person receiving Confidential Information may disclose it to any other person. Nothing in this Protective Order, however, shall be deemed to restrict in any manner the Designating Party's use of its own Confidential Information or the Court's use of Confidential Information for any appropriate judicial purpose. Each party may disclose its own Confidential Information without regard to this Protective Order, unless otherwise prohibited from doing so. Each party may waive previously asserted designations of Confidential Information with notice to all parties.

11. Access to Confidential Information shall be limited to the following categories of persons ("Qualified Persons") with such status in this case and all cases consolidated with this case:

- a. All counsel of record, including staff persons employed by such counsel;
- b. The parties, but only to the extent reasonably necessary to the litigation of

this case;

- c. Any consultant, investigator or expert (collectively “Expert”) who is assisting in the preparation and/or trial of this action, but only to the extent reasonably necessary to enable such Expert to render such assistance;
- d. Any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party, and other non-party witnesses deposed in this case but only for the time reasonably necessary to question the witness;
- e. Court reporters, videographers and outside vendors performing litigation support services for parties in this case;
- f. Counsel who are presently representing clients in a case against any one or more of the Defendants, which arises out of the same or similar set of facts, transactions or occurrences, provided that before disclosing Confidential Information to such counsel, such Defendant (1) must receive notice of the intention to disclose Confidential Information to such counsel; (2) must have the opportunity to move for a protective order in the case in which counsel is involved; and (3) a ruling on the motion for protective order must be issued; and
- g. The Court and its personnel.

12. Any person to whom Confidential Information may be disclosed pursuant to this Protective Order, except counsel of record identified in this Protective Order, staff persons employed by such counsel, this Court and its personnel, court reporters and videographers, shall first have an opportunity to read a copy of this Protective Order and shall agree in writing to the non-disclosure terms of the Confidentiality Acknowledgment annexed hereto as Exhibit A (“Confidentiality Acknowledgment”) before receiving any Confidential Information. Only counsel of record may disclose Confidential Information to another Qualified Person and they must receive the signed Confidentiality Acknowledgment before disclosing the Confidential Information to any Qualified Person other than other Counsel of Record, staff persons employed by such counsel, this Court and

its personnel, court reporters and videographers. Counsel for the party obtaining a person's signature on the Confidentiality Acknowledgment shall retain the original signed acknowledgment until such time as the identity of the signatory is disclosed or until good cause for earlier disclosure of the acknowledgment is shown. Any non-party witness who is being deposed in this case and who refuses to sign Exhibit A may be shown Confidential Information but only for the time reasonably necessary to question the witness, provided that counsel, in good faith believes, that such disclosure is reasonably necessary to the prosecution or defense of the case.

13. If a party or other person receiving Confidential Information pursuant to this Protective Order, except the Court and its personnel, thereafter receives a subpoena or order to produce such information in any other action or proceeding before any other court or agency, such party or person shall, if there are fewer than ten (10) days to comply, immediately, if possible, or within two (2) days if not, or if there are more than ten (10) days, at least seven (7) court days prior to the due date of compliance, notify the Designating Party of the pendency of the subpoena, public records request or order in writing. To give the Designating Party an opportunity to obtain such relief, the party or person from whom the information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order.

Depositions Involving Confidential Information

14. Depositions involving Confidential Information shall be treated, as follows:

- a. Portions of a deposition or depositions in their entirety may be designated Confidential Information by counsel for the deponent or the Designating Party, with respect to documents or information that it has produced, by requesting such treatment on the record at the deposition or in writing no later than thirty (30) days after the date of the deposition.
- b. This Protective Order shall permit temporary designation of an entire transcript as Confidential Information where less than all of the testimony in that transcript would fall into those categories, subject to the following procedure:
 - i. The court reporter shall include on the cover page a clear indication that the

deposition has been so designated.

- ii. Within thirty (30) days of receipt of the final, unsigned deposition transcript by counsel for the Designating Party, such counsel shall advise opposing counsel and the court reporter of the pages, lines and exhibits (if such exhibits are not otherwise so designated) in which Confidential Information appears. The court reporter shall supplement the transcript to indicate the designations. Failure to particularize a designation to opposing counsel within the allotted time shall result in the loss of any designation and shall entitle recipients of the deposition to treat the transcript as non-confidential.
- iii. If a party objects to a page, line, and exhibit designation made pursuant to paragraph 13(b)(ii) of this Order, the party may make an objection using the procedure provided in paragraph 17 of this Order and the procedures of paragraph 17 shall apply to resolution of the objection. The designations shall remain effective until and unless an objection is made and finally resolved.

15. No one may attend, or review the transcripts of, the portions of any depositions at which Confidential Information is shown or discussed, other than persons authorized to receive access to Confidential Information.

Filing or Use of Confidential Information as Evidence

16. No party shall provide any Confidential Information or information derived therefrom to the Court absent a good faith belief that such information is necessary to the resolution of a contested issue. Confidential Information or information derived therefrom shall be lodged with the Court under Practice Book Sections 7-4B and 7-4C. After Confidential Information is lodged with the Court pursuant to Practice Book Sections 7-4B and 7-4C, the designating party shall promptly file an appropriate motion under Practice Book Section 11-20A requesting that the information be filed under seal. No Confidential Information or information derived therefrom

shall be filed with the Court until such time that the Court has ruled on the designating party's motion under Practice Book Section 11-20A.

Objections to Designations

17. Any party may, not later than sixty (60) days prior to the trial of this case, object to a designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If no such motion is filed within the stated time period, the material shall cease to be treated as Confidential. If a motion is filed, information subject to dispute shall be treated consistently with its designation until further order of the Court. With respect to any material which is re-designated or ceases to be subject to the protection of this Protective Order, the Designating Party shall, at its expense, provide to each party which so requests additional copies thereof from which all confidentiality legends affixed hereunder have been adjusted to reflect the re-designation or removed as appropriate.

Inadvertent Waiver

18. Inadvertent failure to designate any information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within thirty (30) days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the Designating Party to substitute properly labeled copies. However, until the receiving party is notified that the information is designated as Confidential Information, the receiving parties shall be entitled to treat the material as non-confidential.

19. In the interest of expediting discovery in these proceedings and avoiding unnecessary costs:

- (1) inadvertent disclosure in this litigation of privileged information and/or work product shall not constitute a waiver of any otherwise valid claim of privilege, immunity, or other protection; and
- (2) failure to assert a privilege and/or work product in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege, immunity, or protection

as to any other document or communication allegedly so protected, even involving the same subject matter. In the case of inadvertently produced privileged and/or work product documents, upon request of the Producing Party, the documents together with all copies thereof and any notes made therefrom shall be returned forthwith to the party claiming privilege and/or work product immunity. Any party may, within five (5) court days after notification of inadvertent disclosure under this Paragraph, object to the claim of inadvertence by notifying the Designating/Producing Party in writing of that objection and specifying the designated/produced material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If a motion is filed, information subject to dispute shall be treated consistently with the Designating/Producing Party's most recent designation until further order of the Court.

Non-Termination

20. Any information or documents designated as Confidential Information shall continue to be treated as such until such time as (a) the Designating Party expressly agrees in writing that the information, documents, testimony or other materials in question are no longer Confidential or (b) there is a finding by the Court that the information or documents are not the proper subject of protection under this Protective Order. Issues regarding the protection of Confidential Information during trial may be presented to the Court as each party deems appropriate.

21. The obligations and protections imposed by this Protective Order, as to any documents not admitted into evidence at trial unless sealed by the Court, shall continue beyond the conclusion of this action, including any appeals, or until the Court orders otherwise. The Court defers consideration of destruction, return and deletion of Confidential Information at the conclusion of this case.

Public Health and Safety

22. Nothing in this Order is intended to prevent any party from raising with the Court any

concern that the non-disclosure of Confidential Information may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office.

Continuing Jurisdiction

23. Any party may petition the Court for a modification of the terms of this Protective Order for good cause shown, after notice and opportunity for a hearing. This Court shall have continuing jurisdiction to modify, amend, enforce, interpret or rescind this Protective Order notwithstanding the termination of this action.

Dated: Bridgeport, Connecticut

February _____, 2019

Hon. Barbara Bellis

EXHIBIT A

DOCKET NO: FBT-CV18-6076475-S:	:	SUPERIOR COURT
	:	
WILLIAM SHERLACH, ET AL.,	:	J.D. OF FAIRFIELD
	:	
VS.	:	AT BRIDGEPORT
	:	
ALEX EMRIC JONES, ET AL.	:	

CONFIDENTIALITY AGREEMENT

The undersigned hereby acknowledges and agrees:

1. I am aware that a Protective Order has been entered in the above-captioned action. I have had the opportunity to read the Protective Order and understand that my willful disclosure of Confidential Information may constitute contempt of court. I consent to the jurisdiction of this Court for enforcement of the terms of this Protective Order.
2. I will not disclose copies of any Confidential Information to any other person, and will not discuss any Confidential Information with any person except those persons described in the Protective Order under the procedures therein specified.

Name: _____

Address: _____

Telephone No.: _____

Dated: _____